

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 02-16983
Non-Argument Calendar

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
April 29, 2005
THOMAS K. KAHN
CLERK

D. C. Docket No. 02-00017-CR-5-002

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GARY MICHAEL SENN,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Florida

(April 29, 2005)

**ON REMAND FROM THE SUPREME COURT
OF THE UNITED STATES**

Before MARCUS, WILSON and PRYOR, Circuit Judges.

PER CURIAM:

This case is before the Court for consideration in light of *United States v. Booker*, ___ U.S. ___, 125 S. Ct. 738 (2005). We previously affirmed Appellant's conviction for conspiracy to possess with intent to distribute more than 500 grams of methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A)(viii), 846, and carrying a firearm during a drug trafficking offense, in violation of 18 U.S.C. § 924(c)(1)(A)(i). See *United States v. Senn*, No. 02-16983 (11th Cir. August 10, 2004). The Supreme Court has vacated our prior decision and remanded the case to us for further consideration in light of its decision in *Booker*.

Nowhere in his initial brief did Appellant raise a constitutional challenge to his sentence or assert any error based on *Apprendi v. New York*, 530 U.S. 466, 120 S. Ct. 2348 (2000), or its progeny. Although Appellant did request an opportunity to file a supplement brief addressing *Blakely v. Washington*, ___ U.S. ___, 124 S. Ct. 2531 (2004), his request was denied.

Appellant's *Blakely/Booker* claim was not timely raised in this Court. As there is nothing in the Supreme Court remand suggesting that we treat this claim as timely, we deem Appellant's untimely *Blakely/Booker* claim abandoned. See *United States v. Dockery*, 401 F.3d 1261, 1262-63 (11th Cir. 2005) (citation omitted); see also *United States v. Curtis*, 380 F.3d 1308, 1311 (11th Cir. 2004) (*Blakely* claim untimely when raised for the first time in a request to file

supplemental briefing).

Accordingly, we reinstate our previous opinion in this case and affirm Appellant's conviction and sentence.

OPINION REINSTATED; CONVICTION AND SENTENCE AFFIRMED.